OFFICE SUPREME COURT U.S.
FILED
JUL 28 1880
JAMES H. MCKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

JOSEPH S. FINCH & CO., APPELLANTS,
vs.
THE UNITED STATES.
No. 83.

BRIEF FOR THE UNITED STATES.

This is a claim based upon the special relations supposed to exist betwixt the United States and the appellants, who, as distillers of spirits, had complied with orders issued by the Commissioner of Internal Revenue, in the year 1868, to procure *Tice meters*, but were prevented by circumstances from making avail of them. The claimants seek to recover $4,150, the price paid by them for the meters.

The *findings of fact* are spread upon the Record, pp. 4 to 21. A clear and concise abstract thereof is given in the opinion (Record, folio 26) of the learned court below. That opinion also presents so thoroughly the views upon which the United States resist a recovery that nothing material remains to be added.

S. F. PHILLIPS,
Solicitor-General.

O

Supreme Court
Nov 17/80 acc
12-273

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 330. 71

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

HAMBLEN COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED OCTOBER 24, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 330.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

HAMBLEN COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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1 Transcript of the records of a cause brought by appeal of the pl'ff from the judgment of the circuit court of Hamblen County and determined in the supreme court of Tennessee, at its September term, 1877, at Knoxville, as follows, to wit:

Caption.

April term, 1877.

STATE OF TENNESSEE,
County of Hamblen:

Be it remembered that at a regular term of the circuit court, begun and held for the county of Hamblen and State aforesaid, at the court-house in Morristown, on the 3d Monday of April, in the year of our Lord eighteen hundred and seventy-seven, it being the sixteenth day of said month, present and presiding the Hon. James G. Rose, judge, &c., of the second judicial circuit for said State, and who is assigned by law to hold said court, when and where the following proceedings were had and entered of record, to wit:

THE EAST TENNESSEE, VIRGINIA & GEORGIA Railroad Company
vs.
HAMBLEN COUNTY.
} Agreed case.

Bond of plaintiff.

2 We acknowledge ourselves indebted to Hamblen County, the defendant in the above suit, in the sum of two hundred and fifty dollars, to be void on condition that the E. Tenn., Va. & Ga. Railroad Co. prosecutes an action in the form of an agreed case this day commenced against said Hamblen County in the circuit court of Hamblen County, with effect, or if payment of all costs and damages, incident on failure thereof, and pay all costs which may at any time be adjudged against them.

Witness our han's and seal this 16th day of April, 1877.

THE E. T., VA. & GA. R. R. CO.,
By R. M. BARTON, *Atto.*
ROB'T M. BARTON, *Security.*

(Endorsed:) Filed April 16, 1877. T. C. Cain, clerk.

Bond of defendant.

We acknowledge ourselves indebted to the East Tennessee, Virginia and Georgia Railroad Company, the plaintiff in the above suit, in the sum of two hundred and fifty dollars, to be void on condition that the County of Hamblen defends an action pending in the form of an agreed case this day commenced by said E. T., V. & Ga. R. R. Co., in the circuit court of Hamblen County, with effect, or if payment of all costs and damages incident on failure thereof, and pay all costs which may at any time be adjudged against them.

Witness our hand and seal this 16th day of April, 1877.

3 W. A. HOWELL,
Chairman for Hamblen County.

(Endorsed:) Filed April 16, 1877. T. C. Cain, clerk.

REC. 330—1

Agreed facts.

THE E. TENN., VA. & GEO. RAILROAD CO. *vs.* THE COUNTY OF HAMBLEN. } Agreed case.

To the Hon. James G. Rose, judge, &c., holding the circuit court for Hamblen County:

The plaintiff and the defendants, for the purpose of securing the settlement of legal difficulties that have arisen between them, agree upon the following state of facts:

On the 18th of November, 1853, the legislature granted to Wm. Houston, Hugh Graham and others, and their associates who should become stockholders, a charter incorporating them a body corporate and politic, under the name and style of the Cincinnatti, Cumberland Gap and Charleston Railroad Co., with succession for ninety-nine years, which charter is here referred to as a part of this agreed case, as published in the pamphlet acts of 1853-'4, pages 645 to 648, inclusive.

By the 6th section it is provided, "That whenever said company shall have completed that part of said road to Cumberland Gap to the E. T. & Va. R. Road or to the southern boundary line of the State of
4 Tennessee, they shall have all the rights and privileges conferred by this charter for the period of ninety-nine years."

By the 8th section it is provided "That said company shall be, and they are hereby, vested with all the rights, powers, and privileges, and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except otherwise provided for in this charter."

The charter to which reference is here made as a part of the charter of the Cincinnatti, Cumberland Gap and Charleston Railroad Co., was granted by the legislature of Tennessee on the 9th of February, 1850, and is here referred to and made a part of this agreed case as published in the pamphlet acts of 1849-'50, pages 239 to 254, inclusive.

By the 40th section of said act it is enacted "That the capital stock in said company, the dividends thereon, and the roads and fixtures, depots, workshops, warehouses, and vehicles of transportation belonging to the company shall be forever exempt from the taxation in each and every of the said States of Tennessee and Kentucky, and it shall not be lawful for either of the said States or any corporation or municipal
5 police, or other authority thereof, or of any town, city, county, or district thereof, to impose any tax on such stock or dividends, property or estate: Provided, the stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State in common with and at the same rate as money at interest or interest thereon, and when the State shall impose a tax on the dividends declared in favor of the stockholders of the company, the tax shall extend only to such proportion of the said dividends and capital stock as the part of the road in that State shall bear to the whole road, from the profits of which the said dividends have arisen, which tax, when imposed, shall be retained by the company out of the dividends and paid to the State; but no tax shall be imposed so as to reduce the part of the dividends to be received by the stockholders below the legal interest of the State."

Under the charter so granted to Wm. Houston and others, stock was subscribed, and the Cincinnatti, Cumberland Gap and Charleston Railroad Co. was formed, the road surveyed and located, and that part of

said road lying between Morristown, Hamblen County, and
6 Wolfe Creek, in Cocke County, built, ironed, and equipped, and for a time was run by said company, the C., C. G. & C. R. R. Co. The road from Wolfe Creek to the N. Carolina line has not yet been built. To enable the company to build, iron, and equip said section, together with some masonry of the bridge of Holston, the company, under special acts of the legislature of Tennessee, and under the general internal improvement acts of 1852, borrowed from the State coupon bonds to the amount of $1,373,000, on which interest had accumulated, which said company was bound to, but did not pay, amounting on the 30th of January, 1871, to the sum of $284,108.52, making the sum due to the State on account of said loan on the 30th January, 1871, one million six hundred fifty-seven thousand one hundred and eight dollars and fifty-two cents ($1,657,108.52), to secure the payment of which a lien was retained by the statutes authorizing said loans of bonds by the State upon all the property, real and personal, stock and franchises, of said railroad co. The company failing to pay the interest on said bonds, the legislature passed a law giving to the chancery court at Nashville
7 jurisdiction of all questions arising upon said loans by the State to the various railroad companies in the State, which act, approved on the 22 of December, 1870, as well as the act approved July 5, 1870, are here expressly referred to as a part of this agreed case. The bonds of the State were loaned to said C., C. G. & C. Railroad Co. under the provisions of the general internal improvement act of 1852 and the laws amendatory thereof, all of which are referred to and made a part of this agreed case.

On the 20th of July, 1871, the State of Tennessee filed a bill under the provisions of the act of Dec. 22, 1870, in the chancery court at Nashville against the Cincinnati, Cumberland Gap and Charleston Railroad Co. and the stockholders of said company (together with other railroad companies and stockholders and others), seeking to enforce the lien of the State and secure the payment of the interest due on said bond, and the redemption and payment of the bonds. The jurisdiction of the court was accepted, the rights of the parties ascertained by proper references, and, on hearing, the following decrees were pronounced, to wit:

THE STATE OF TENNESSEE
vs.
THE EDGEFIELD & KY. R. R. CO., CINCINNATI, Cumberland Gap & Charleston R. R. Co., and others.

Be it remembered that on the 25th day of March, 1871, before
8 the hon'l E. H. East, chancellor, this cause came on to be heard as to the Cincinnatti, Cumberland Gap and Charleston R. R. Company, upon the complain'ts' bill, and answer and demurrer of the defendant (the said Cincinnatti, Cumberland Gap and Charleston Railroad Company), and judgment pro confesso entered against the stockholders and unknown creditors of said company, and all other persons made defendants to the bill who have not made defense, the said railroad company and its stockholders being represented by their solicitors; and it is agreed by the parties, by their solicitors, that the State of Tennessee has issued to the Cincinnatti, Cumberland Gap and Charleston Railroad Company its coupon bonds to the amount of one million three hundred and seventy-three thousand dollars ($1,373,000.00) in aid of said company; that the State of Tennessee has funded the interest upon past due cou-

pons upon said bonds by issuing in aid of said company thirty-one thousand six hundred and eighty dollars of her bonds in funding said interest ($31,680.00), making the debt and prior lien of the State due from the Cincinnatti, Cumberland Gap and Charleston Railroad Company one million four hundred and four thousand six hundred and eighty dollars ($1,404,680.00), and that the interest due to the State thereon
9 to the 1st day of January, 1871, is the sum of two hundred and fifty-two thousand five hundred and twenty-eight dollars and fifty-two cents ($252,528.52), making the sum total due from the said defendant to the complainant, up to the 1st day of January, 1871, of one million six hundred and fifty-seven thousand one hundred and eight dollars and fifty-two cents ($1,657,108.52). The Cincinnatti, Cumberland Gap and Charleston Railroad Company and its stockholders therein deny the right of the State of Tennessee to sell its road, property, franchises, and privileges until said bonds issued by the State fall due and payable, but by consent of parties it is agreed that said company is insolvent and unable to pay said debt due the State of Tennessee, or to pay interest due thereon and falling due; and it is further agreed that the State of Tennessee has a lien upon all the property and franchises of said company for said debt and interest; and said railroad company and its stockholders, believing that it is the interest of the State of Tennessee, said company, its stockholders, and all others interested in said railroad company, that it should be sold with all the franchises and privi-
10 leges of said company, the said company and its stockholders, therefore, assent to a sale of the said railroad and all the property, real and personal, and right of way and franchises and privileges of said company, and the interest of the stockholders and all other persons, their heirs, assigns, and successors, upon the condition that the purchaser thereof shall keep up, maintain, operate, and run said railroad as a public railroad, operated by steam-power in the same manner that the said road is now run and operated—that is to say, by at least one trip daily, Sunday excepted, each way over said road, by an engine and one or more passenger-cars, and such other cars as the transportation of freight or passengers offered on said road may require. And the right is hereby expressly reserved to the present stockholders of said company or any one or more of them to compel the execution of said condition and duties and obligations of such purchaser or purchasers, his or their heirs, successors, or assigns, in regard to said obligations and deputations hereinbefore set forth.

And by consent it is further ordered and decreed by the court that the Cincinnatti, Cumberland Gap and Charleston Railroad Company, or any one or more of its stockholders, may purchase said railroad and the property, franchises, and privileges of said company, within
11 ninety days from the confirmation of the master's report ordered by this decree, at the present minimum value of the said railroad and its franchises, payable in the legally issued bonds of the State of Tennessee or any issue of bonds, or to sell to other parties on the same terms and conditions, the bonds to be paid under the provisions and restrictions of the act of December 21st, 1870. But because it does not appear to the court what is the minimum value of the property and franchises of said company, payable in the bonds of the State, it is therefore by consent ordered and decreed by the court that the clerk and master of the court hear proof and report what is the fair and reasonable present minimum value of the property and franchises of the said Cincinnatti, Cumberland Gap and Charleston Railroad Company, payable in the bonds of the State of Tennessee and also payable in

cash, and make his report to this court. But on suggestion of the complainants' counsel and by consent, it is ordered and decreed that said sale and purchase, as above provided for and agreed to, shall not be at less minimum value than seven hundred thousand dollars ($700,000.00) in the bonds of the State of Tennessee, with the coupons attached from and after the 1st day of January, 1871; and by consent it is fur-
12 ther ordered and decreed by the court that upon the confirmation of the master's report, as the same may be modified by the chancellor, if said railroad company or its stockholders or any one or more of them fail to purchase or to sell to other parties, as herein heretofore agreed upon in this decree, within ninety days from said confirmation, at the minimum value of the said company's road, property, franchises, and privileges, as fixed by said report and as modified by the chancellor as to value, which shall not be less than seven hundred thousand dollars ($700,000.00) in the bonds of the State of Tennessee, then the commissioners on behalf of the State may sell all the property and franchises of the Cincinnatti, Cumberland Gap and Charleston Railroad Company to the best advantage, either at public or private sale, or at their discretion to sell the debt of the State against said railroad company.

And by consent it is further ordered and decreed by the court that the rights of action that the said railroad company may have against any other company or person or persons is hereby reserved to the said Cincinnatti, Cumberland Gap and Charleston Railroad Company.

And by consent it is further ordered and decreed by the court that the costs of making respondent a party defendant in this cause
13 and all the cost incident to this proceeding as to respondent shall be paid out of the proceeds of the sale of defendant's road.

THE STATE OF TENNESSEE
vs.
THE EDGEFIELD & KENTUCKY RAILROAD Company, Cincinnatti, Cumberland Gap and Charleston Railroad Company, and others.

Be it remembered that on 8th day of April, 1871, before the Hon. E. H. East, chancellor, this cause came on for final hearing as to the defendant, the Cincinnatti, Cumberland Gap and Charleston Railroad Company, its stockholders, and all other persons made defendants upon the report of the clerk and master, made in obedience to a former decree in this cause, and the exceptions thereto filed by the solicitors of the defendant, the Cincinnatti, Cumberland Gap and Charleston Railroad Company, which report is in the following words and figures, to wit: (Without copying the report of the clerk and master entire, it is sufficient to state that the report showed that he had taken the depositions of witnesses as directed in the foregoing decree as the basis of his report, from which he reports that the reasonable present minimum value of the property and franchises of the Cincinnatti, Cumberland Gap and Charleston Railroad Company was $700,000.00 in the bonds of the State of Tennessee, and $148,000.00 as its minimum cash value.
14 To this report the company's solicitors filed exceptions, but the exceptions were overruled and the report confirmed, as appears from the following, which is the action of the court in the premises:)

And after argument of counsel and mature consideration of the court it is ordered, adjudged, and decreed by the court that said exceptions be overruled, and said report of the clerk and master be in all things

confirmed. fixing the minimum value of the Cincinnatti, Cumberland Gap and Charleston Railroad, with its irons, equipments, right of way, real and personal property, franchises and privileges of the Cincinnatti, Cumberland Gap and Charleston Railroad Company at seven hundred thousand dollars ($700,000.00), payable in the bonds of the State of Tennessee, with the coupons attached of and after the 1st day of January, 1871, the chancellor being of the opinion from said report that the present minimum value of the same in cash is four hundred and forty-eight thousand dollars ($448,000.00), and in bonds of the State, with coupons attached as aforesaid, is seven hundred thousand dollars ($700,000.00). The court therefore so ordered, adjudged, and decreed.

And it is further ordered, adjudged, and decreed by the court that
15 the defendant, the Cincinnatti, Cumberland Gap and Charleston Railroad Company, or any one or more of the stockholders, shall have the privilege for ninety days from the date of this decree of purchasing the said railroad and all the property, real, personal, and mixed, and the franchises and privileges of said railroad company, for seven hundred thousand dollars, payable in the bonds of the State of Tennessee, with the coupons attached of and after the first day of January, 1871, or selling the same to other parties within said ninety days for the like amount in bonds, with said coupons attached, as provided for in the consent decree in this cause, and under the terms, conditions, restrictions, and liabilities contained in said decree. And if said company fail to make said purchase, or any one or more of its stockholders fail to purchase as aforesaid, and if said company fail to sell to other parties as aforesaid within ninety days from this date as aforesaid, and under the conditions, liabilities, and restrictions as aforesaid, which are fully set forth in said former decree, then the commissioners of the State "may sell as directed in said former decree." Upon which the commissioners appointed for the sale of delinquent railroads having
16 offered said road, property, and franchises for sale, and no bid being made for the Cincinnatti, Cumberland Gap and Charleston road, except the bid of C. M. McGhee for himself, R. T. Wilson, and associates, which bid was in the words and figures following, to wit:

"To the commissioners for the sale of delinquent railroads for the State of Tennessee:

"I hereby propose, upon the part of myself, R. T. Wilson, and associates, to pay ($300,000) three hundred thousand dollars in bonds of the State of Tennessee, with January (1871) coupons attached, for the Morristown, or Cincinnatti, Cumberland Gap and Charleston Railroad. For and in consideration I expect a full and perfect title to the road, including the States' interest, franchises, and privileges. I will, within a few days, pay one-fourth of the amount and execute proper bonds for deferred payments; I will require sufficient time to allow the bonds for the first payment to be sent me from New York.

"Yours, respectfully,

"C. M. McGHEE.

"NASHVILLE, *Oct.* 10, 1871.

"C. M. McGHEE."

Which proposition of purchase was accepted by the commissioners in the following words and figures, to wit:

"NASHVILLE, *Oct.* 10, 1871.

"The commissioners accept the proposition of C. M. McGhee and R. T. Wilson & Co., provided the same will be complied with in ten
17 days. By order of the board.

"ED. R. PENNEBAKER,
"*Secretary Board of Commissioners.*"

A sufficient bond was executed by C. M. McGhee, R. T. Wilson, Jo. Jaques, & R. C. Jackson. This sale was reported by the commissioners to the court, and was on the 19th of October confirmed by the court by decree, in the words following, to wit:

* * "which report being seen, heard, and fully understood by the court, and not excepted to, is in all things confirmed; and it appearing to the satisfaction of the court that the sales of the Knoxville and Kentucky and the Cincinnatti, Cumberland Gap and Charleston Railroad, with their property and franchises, have been made by the commissioners in conformity with the previous decrees, it is therefore ordered, adjudged, and decreed that these said sales be confirmed, and that the commissioners retain the bonds and collect the residue of the purchase money as the same falls due, and, when the same is fully paid, make title to the purchasers according to the terms of the contract and former decrees of this court. It is further ordered and decreed by the court that the purchaser be at once put in possession of these roads, severally bought by them, with all the property, franchises, and effects so bought by them as aforesaid, and for this purpose, if necessary, the clerk
18 and master is hereby ordered and directed, upon the application of either of said purchasers, to issue a writ of possession, or writs of possession, directed to the sheriff of the several counties in this State through which the roads may run, or in which any part thereof, or of the property sold may be, directing said sheriff to put the purchasers in possession of such property at once, and make return of his action to this court. It is further ordered, adjudged, and decreed that all the acts of the commissioners in reference to said sales be, and the same are hereby, approved, sanctioned, and ratified by the court." * *

The purchase money has all been paid to the State, and proper conveyances made according to the terms of contract and decrees of court hereinbefore cited. The purchasers, C. M. McGhee and R. T. Wilson, have sold, and by proper conveyances conveyed said railroad property, stock, and franchises so purchased by them to the plaintiff, The E. T., Va. & Ga. Railroad Co., and they are now the owners thereof, and are keeping up said road and running it as a railroad, as common carriers of freight, passengers, and the public mails. The section of road from Wolfe Creek to the North Carolina line has not yet been completed, so that neither the Cin., C. G. & C. Railroad Co. nor the present
19 owners have completed the road from the intersection with the E. T., Va. & Ga. R. R. (formerly the E. T. & Va. Railroad, to Cumberland Gap, or to the North Carolina line, lacking four miles of reaching the line, nor has any material part of the road north of Morristown been built. The distance of road really completed and now used by plaintiff as a railroad is about forty miles. The plaintiff owning and operating the line of railroad from Chattanooga to Bristol under their charter have accepted the terms tendered by the act of 1875, ch. , approved March 24, 1875, and make the return of gross earnings, upon which the plaintiff pays one and one-half per cent., as provided in said

statute, in lieu of all other taxes. But in this return the plaintiff does not include the receipts upon the Cincinnatti, Cumberland Gap and Charleston Railroad, as the plaintiff operates and runs that road under the charter which they purchased as aforesaid, as a separate and distinct road. Under their charter so purchased the plaintiff did not report to the comptroller, in pursuance of the provisions of the act of 1875, chapter 78, which is here made a part of this agreed case, as published in the pamphlet acts, pages 100 to 105, inclusive. Under the provisions of said act the governor appointed John Helms
20 commissioners, who in the discharge of their duties assessed the value of the C., C. G. & C. Railroad at from Morristown to Wolfe Creek, in Cocke County, at the sum of $200,000, being the sum of $5,000 per mile, and showed in their report that eight miles of said road lie in Hamblen County, making the assessed value of the road, or that part that lies in Hamblen County, to be the sum of $40,000, which the comptroller certified to the clerk of the county court of Hamblen County, as required by said act, and under the provisions of the act the clerk of the county court upon such assessed value fixed the amount of the county tax as laid by the court, ascertaining and fixing the amount of said tax at the sum of $280.00.

By the 17 section of the act incorporating the Louisville and Nashville Railroad Company, the said company is allowed, among other charges, to charge as follows: * * "The charge for transportation for heavy articles shall not exceed 35 cents per hundred pounds for every 100 miles." This fixes the maximum rate to be charged on this road for the transportation of "heavy articles." The distance between Morristown and Wolfe Creek, the termini of this road, is 40 miles. The charge for the transportation of heavy articles between these points or termini has never been as low as 14
21 cents per hundred pounds. It is agreed that there are eight miles of said road lying in said county of Hamblen, and that the valuation per mile is not excessive, and that for said year 1875 the county tax for Hamblen County was fixed at seven mills on the dollar. We agree that the time allowed the C., C. G. & C. Railroad Company by the terms of its charter, and all amendments thereto, in which to complete said road, had expired prior to the passage of the act of 1875, taxing railroads, and before the filing of the bill for the sale of the road and franchises under the provisions of the acts of December 2d, 1870, and July 5th, 1870, before referred to. No steps have been taken or proceedings instituted by the State by quo warranto or scire facias to annul and declare void the charter and franchises of the C., C. G. & C. Railroad Co. so sold by the State and purchased by McGhee, Wilson, &c., the vendors of this plaintiff. It is further agreed that the terminus of the road at Wolfe Creek is the nearest connecting point to the terminus at the State line at which a connection with the stage line or road can be made, and that at present there is no railroad constructed in North Carolina connecting with the plaintiff's road at the State line. All facts stated in the foregoing agreement we agree upon as true, reserv-
22 ing to each party the right to object to any fact stated as not relevant to the issues presented that would, by the laws of evidence, be available if the same were presented by proof, oral or written, on a regular trial.

The plaintiff, The East Tennessee, Virginia and Georgia Railroad Company, claim, and maintain before the court, that as the State in the enforcement of her mortgage lien created by statute, in her own courts, had procured to be sold, and did, through her legally appointed commis-

sioners, sell to the plaintiff's vendors the road, rolling-stock, equipments, property, and franchises of the Cincinnatti, Cumberland Gap and Charleston Railroad Co. all the rights and privileges confer'ed by the charter upon said railroad co., including the exemption from taxation by the State, counties, and municipal corporations, the plaintiff holds said property exempt from all taxes, and that the act of 1875, ch. 78, above mentioned, did not authorize said commissioners to make any assessment of said road and property, and the plaintiff is not bound to pay said tax, nor is the plaintiff's property liable to be assessed for taxes under the laws of Tennessee, all acts of the legislature assuming the right to tax said property being unconstitutional.

And the defendants, the justices of Hamblen County, maintain
23 and aver that the "immunity" from taxation was a privilege or "immunity" conferred upon the C., C. G. & C. Railroad Company coupled with a condition precedent, and to be enjoyed by it only upon compliance with that condition, which was the completion of its road from Cumberland Gap to the E. T. & Va. Railroad or to Paint Rock, and that since neither said company, the present plaintiff or its vendors have complied with said condition, they are not entitled to the exemption. They maintain that another condition imposed upon said railroad company was that it should not charge higher rates of freight on heavy articles than 35 cents per hundred pounds per hundred miles; that the plaintiffs and their predecessors in ownership of this road have uniformly charged a higher rate than this on such articles, and have therefore forfeited any right to the enjoyment of this immunity. They maintain that the legislature of Tennessee is not and was not authorized by the constitution of 1834 to exempt this species of property from taxation. And that for these reasons they ought not to be inhibited from collecting taxes from plaintiff.

We agree that the costs of the cause shall abide the decision of the court. If the court is of opinion that the plaintiff is not liable for the tax, judgment shall be entered for costs against the county of
24 Hamblen, and a prohibition against further efforts to collect the tax. If the court is of opinion that the company is liable for the taxes, judgment shall be entered for the $280 and the costs in favor of the county against the company.

THE E. T., VA. & GEO. RAILROAD CO.,
By ROBT. M. BARTON, *Counsel & Atto.*
THE JUSTICES OF HAMBLEN COUNTY,
By J. C. HODGES, *Attorney.*

The foregoing is a true and bona fide case, the facts of which are agreed upon for the purpose of determining a real controversy and settling the rights of the parties.

ROBT. M. BARTON,
Atto. for E. T., V. & Ga. Railroad Co.
W. A. HOWELL,
Chairman of the Ct. Hamblen Co.

Sworn to and subscribed before me this April 16, 1877.
T. C. CAIN, *Cl'k.*

(Endorsed:) Filed April 16, 1877. T. C. Cain, cl'k.

SATURDAY, *April* 21, 1877.

E. T., V. & G. R. R. Co.
vs.
HAMBLEN COUNTY. } Agreed case.

This case being reached upon the docket for trial, the agreed state of facts was submitted to the court, and the court not being fully advised in the premises is pleased to hold the case under advisement until the next term of this court.

25 STATE OF TENNESSEE,
Hamblen County:

Be it remembered, that at a regular term of the circuit court, begun and held for the county of Hamblen, and State aforesaid, at the court-house, in the town of Morristown, on the 3d Monday of August, in the year of our Lord eighteen hundred and seventy-seven, it being the 20th day of said month, present and presiding the Hon. John A. McKenney, judge, &c., of the first judicial circuit, presiding by interchange with the Hon. J. G. Rose, judge, &c., of the second judicial circuit of said State, when and where the following proceedings were had and entered of record, to wit:

THE E. T., VA. & GA. R. R. Co.
vs.
HAMBLEN COUNTY. } Agreed case.

In this case which was submitted to the hon. court at last April term, and argued by counsel and held under advisement, Hon. James G. Rose being upon the bench, presiding for this purpose, delivered his opinion, which is in the words and figures following:

The Cincinnatti, Cumberland Gap and Charleston Railroad
26 Company was chartered by act passed Nov. 18, 1853, (acts 1853–'4, ch. 301, p. 645.) The 8th section provides, "That said company shall be, and they are hereby, vested with all the rights, powers, and privileges, and subject to all the restrictions and liabilities of the Nashville and Louisville Railroad Company, except where otherwise provided for in this charter." Plaintiff insists that this 8th section has reference to an existing charter, and that the 40th section thereof exempts the corporate property, capital stocks, &c., of the company from taxation, which is thus made a part of the charter of the Cincinnatti, Cumberland Gap and Charleston Railroad Co. (acts 1849–'50, ch. 76, pages 239–254.) The statute last referred to was passed by the legislature of Tennessee, February 9, 1850, looking to the connection of Nashville and Louisville by rail. The 51st section of this act provides:

☞"That this act shall become a law whenever the State of Kentucky may enact the same, for the same purpose, with such modifications and amendments as they may deem right, not inconsistent with the provisions hereof," &c.

It is apparent from this, the closing section of the act of Feb'y 9,
1850, that the act did not, nor was it intended to, take effect im-
27 mediately. It was expressly provided on the face of the act itself that it was not to become a law until the "State of Kentucky enacted the same for the same purpose," without material modifications. The operation of the act in Tennessee was made to depend on its adoption in Kentucky. Now, was this Tennessee charter adopted in Ken-

tucky? Our legislation, reported cases, and legal history show that it was not. The Kentucky legislature, on March 5, 1850, passed a charter of its own for the contemplated railroad, differing most materially from the Tennessee charter. Under the Tennessee act, the style of the company was to be the Nashville and Louisville Railroad Company; was to have succession for 99 years; and its capital stock and property was to be exempt (40th section) from taxation. Under the Kentucky act, the style of the company was to be the Louisville and Nashville Railroad Company; was to have succession for 999 years, and its property was not exempt from taxation; these were very material differences. The Kentucky act contained provisions wholly inconsistent with the
28 Tennessee act, and the legislature of Tennessee, recognizing this fact, passed a statute adopting the Kentucky charter in this State, granting right of way, &c., &c. (acts 1851-'52, ch. 23, p. 28-29.) This latter statute is a legislative abandonment of the charter granted at its prior session. It is a part of our legal history that the company was organized under the Kentucky charter, which contains no exemption from taxation (see Louisville & Nashville R. R. Co. vs. the State of Tennessee et al., 8 Heisk., 663). The conclusion reached in that case is, that the property of that company is taxable. Now, the 8th section of the Cincinnatti, Cumberland Gap and Charleston Railroad Company provides that that company shall be vested with all the rights, powers, and privileges of the Nashville and Louisville Railroad Company. To what does this 8th section refer? The agreed case states that it refers to the Tennessee act above mentioned, passed Feb'y 9, 1850. If it refers to the Kentucky charter, under which the road was built and now operated, it would not avail plaintiff in this case, as that charter contains no exemptions from
29 taxation (8 Heisk., p. 663); but if it refers to the Tennessee act passed Feb'y 9, 1850, does it leave the plaintiff in any better situation? The Tennessee act was only a proposed charter; it was tendered to a company as a charter on certain conditions; it was to take effect and become a law on a certain event; but no company ever accepted it or organized under it; the event on which it was to become a law never took place. There is not, and never was in this State, a "Nashville and Louisville Railroad Company"; hence the 8th section in question in referring in terms to the Nashville and Louisville Railroad Company refers to a company that never existed in fact, was never organized, and, therefore, never possessed any such supposed "rights, powers, and privileges" as is assumed in said 8th section.

It is insisted, however, that the said 8th section has the legal effect to vitalize the act of Feb'y 9, 1850, and to confer the rights, powers, and privileges therein enumerated on the Cincinnatti, Cumberland Gap and Charleston Railroad Company. I do not assent to this view.
30 The act of Feb'y 9, 1850, proprio vigore, never took effect as a statute; no company ever accepted it; the legislature abandoned it and granted a different charter, and that before the enactment of the said 8th section in question. If the said 8th section had in terms and by apt words conferred on the C., C. G. & C. R. R. Co. "all the rights, powers, and privileges mentioned in an act passed Feb'ry 9, 1850, entitled An act to incorporate the Nashville and Louisville Railroad Company," or if it had used words of equivalent import, it would have been sufficient. But it does nothing of the kind. It does not in terms refer to any statute. It assumes the existence of a railroad company which never existed; it assumes that such company possessed certain rights, powers and privileges, which for want of an existence in fact it could

not possess; it further assumes that such railroad company derived said rights, powers, and privileges from a supposed charter, which in fact never went into force as a statute. I am, therefore, of opinion
31 that judgment on the case agreed should be rendered for the defendant unless the court is concluded by an admission of defendant.

The agreed case substantially admits that the 40th section of the act of Feb'ry 9, 1850, is a part of the charter of the C., C. G. & C. R. R. Company. But in my view, the said act of Feb'ry 9, 1850, never had the force of law; and, if so, the said 40th section is no part of the charter of the C., C. G. & C. R. R. Co., and never was. Then, if the parties have admitted as law that which the court deems not *be* law, is the court bound to adjudge according to the erroneous admission? I think not. Consent of parties cannot make or change the law. It is the province of an agreed case to state facts only, leaving the court untrammelled as to all questions of law.

This conclusion reached, renders it unnecessary to consider the other questions discussed in argument and raised by the agreed case.

Judgment for defendant for taxes and costs.

JAMES G. ROSE,
Judge, &c.

It is therefore considered by the court that Hamblen County recover of plaintiff, the E. Tenn., Va. & Ga. R. R. Co., the sum of two
32 hundred and eighty dollars, the taxes assessed in favor of said Hamblen County for the year 1875, with the costs of this cause, for which let execution issue. To which findings and judgment of the court the plaintiff excepts in law, and prays an appeal to the next term of the supreme court of Tennessee, to be holden at Knoxville, on the 2d Monday in September, 1877, which appeal is granted upon the plaintiff giving bond as required by law, which is done.

Appeal bond.

We, the East Tennessee, Virginia and Georgia Railroad Company and Robt. M. Barton, their security, acknowledge ourselves indebted to Hamblen County in the sum of two hundred and fifty dollars. But the conditions of this obligation is such that whereas Hamblen County recovered a judgment against the said railroad company in the circuit court of Hamblen County on the 21st day of August, 1877, for the sum of two hundred and eighty dollars and cost, and from which said judgment said railroad company pray an appeal to the next term of the su-
33 preme court to be held at Knoxville, Tennessee:

Now, if the said railroad company shall prosecute said appeal successfully, or abide by and perform the judgment of the supreme court in the premises, then this obligation to be void; otherwise, to remain in full force and effect.

Witness our hands this Aug. 21, 1877.

THE E. T. VA. & GA. R. R. CO.,
By R. M. BARTON, *Atto.*
ROBT. M. BARTON, *Sec't'y.*

(Endorsed:) Filed Aug. 21, 1877. T. C. Cain, cl'k.

Bill of cost:

State and county tax	10 00
Clerk, T. C. Cain, for ent. & no. cause, 25; 4 dockets, 40; filing agreement, 25; taking & filing 2 pros. bonds, 50; taking affidavit, &c., 25; 1 continuance, 25; for copying opinion in record book, 1,000 words, 1.00; judgment, 75; judgment for cost, 25; entry of appeal, &c., 75; filing appeal bond, &c., 25; taxing bill cost, 50; transcript, 7,000 words, 7.00; postage, 15; certif. & seal, 75	13 40
	23 40
34	23 40
Judgment for deft. Aug. 21, 1877	280 00
	$303 40

STATE OF TENNESSEE,
Hamblen County:

I, T. C. Cain, clerk of the circuit court for said county of Hamblen, and State aforesaid, hereby certify that the foregoing thirty-six pages of words and figures comprise an entire and perfect transcript of the record and bill of costs remaining in my office in the case wherein The East Tenn., Va. & Georgia Railroad Company is plaintiff, and the County of Hamblen defendant.

Witness my hand and seal of office, at office in Morristown, this September 7, 1877.

T. C. CAIN, *Clerk*,
By GEO. S. CROUCH, *D. C.*

Opinion.

Proceedings in the supreme court.

THE EAST TEN'EE, VA. & GA. R. R. CO., IN error,
vs.
HAMBLEN COUNTY.

35 This case was submitted to the circuit court of Hamblen County upon an agreed state of facts, and involves the question whether the railroad extending from Morristown to Wolfe Creek is subject to taxation. The entire road, with its franchises, was purchased by the present owner under a sale made in virtue of proceedings had in the chancery court at Nashville for the sale of delinquent railroads; and it is claimed that the entire road, with its appurtenances, &c., was exempt from taxation in the hands of the original company, and that the exemption still attaches to the property in the hands of the present owner.

The road was originally constructed and owned by a corporation styled "The Cincinnatti, Cumberland Gap and Charleston Railroad Company." The charter of this company was granted in act of the legislature of the 18th November, 1853. Previously, on the 9th Feb., 1850, the legislature had passed an act chartering the Nashville and Louisville R. R. Co., and by the 40th section it is provided that the
36 capital stock, dividends, roads, fixtures, &c., depots, workshops,

warehouses, and vehicles of transportation should be exempt from taxation, with certain provisos not important now to consider." The 8th section of the charter of the Cincinnatti, Cumberland Gap and Charleston R. R. Co. provides, "That said company shall be and they are hereby vested with all the rights, powers, and privileges, and subject to all the restrictions and liabilities of the Nashville & Louisville Railroad Company, except otherwise provided for in this charter." It is by virtue of this section that the exemption is claimed, and the question is whether the exemption granted to the Nashville & Louisville Company was granted to the C., C. G. & C. Co. by the language vesting said latter company with "all the rights, powers, and privileges" of the former.

There can be no question, if we adopt a liberal construction, that an exemption from taxation might be included under the terms "rights or privileges;" but it is a settled and uniform rule of construction, according to all the authorities, that no exemp-
37 tion from taxation can be allowed unless it be granted in plain and unambiguous terms; every presumption and intendment is against it, and every doubt in the language used is to be resolved against the exemption; bearing this in mind it results that the grant of the "rights, powers, and privileges" of the Nashville & Louisville R. R. Co. did not carry with it the immunity or exemption from taxation granted to that company; full meaning may be given to the words "rights, powers, and privileges," without including the exemption. This view is strengthened by the language used in the 8th section of Art. XI of the constitution, by which the legislature is forbidden to pass any law granting to any individuals rights, privileges, immunities, or exemptions, other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law. The use of all these terms indicates that a separate meaning is attached to each, or at any rate that "rights &
38 privileges" do not necessarily include immunities & exemptions in the sense in which the framers of the constitution used the terms. The exemption in this case not having been granted in explicit and unequivocal terms, cannot be allowed.

We place our decision of the case upon this ground without noticing other questions.

The judgment will be affirmed.

McFARLAND, *J.*

Decree.

EAST TENN., V. & G. R. R. CO.
vs.
HAMBLEN COUNTY.

This cause coming on to be heard on the transcript of the record from the circuit court of Hamblen County, and the cause being heard and argument had, and it appearing to the court that there is no error in the record and judgment of the court below, the judgment is affirmed. It is therefore considered by the court that the County of Hamblen
39 recover of the pl'ffs the sum of two hundred & eighty dollars, the taxes assessed in favor of Hamblen County for the year 1875, together with interest thereon from the date of the judgment in the circuit court to this day, being one dollar & eighty six cents, making the sum of $281.86. It is further considered by the court that the defendant

recover of the plaintiff and Robert M. Barton, the security in the prosecution and appeal bonds, the costs in the cause in this court and the court below, for which execution will issue.

Petition.

To the Hon. Jas. W. Deaderick, chief justice of the supreme court of Tennessee.

Your petitioner, The East Tennessee, Virginia and Georgia Railroad Company, showeth unto your honor that on the day of October, 1877, in a suit pending in the supreme court of Tennessee, for the eastern division of said State, at Knoxville, in which your petitioner was plaintiff and Hamblen County was defendant, a judgment was
40 rendered by said supreme court against your petitioner for the sum of $281.86 and the costs of said suit. Said suit drew in question the validity of statutes of Tennessee on the ground that they were repugnant to the Constitution of the United States; the decision of the court was in favor of their validity; said suit also drew in question that clause of the Constitution of the United States which forbids the States passing any law impairing the obligation of contracts, and the decision of said court was against the rights claimed by your petitioner under said clause of the Constitution of the United States as aforesaid. Said judgment is final and rendered by the highest tribunal in said State in which a judgment could be rendered.

Your petitioner charges that said judgment is erroneous and in conflict with the Constitution of the United States, and herewith presents a writ of error, duly issued by H. M. Aiken, clerk of the circuit court of the United States for the eastern division of Tennessee, which
41 it prays your honor to allow, and in duty will ever pray, &c.

ROBT. M. BARTON, SEN'R,
Sol. for Petitioner.

KNOXVILLE, *Oct. 3d*, 1877.

Petition filed October 3, 1877.
Test—

J. F. DEADERICK, *Clk.*

42 UNITED STATES OF AMERICA:

The President of the United States to the honorable the supreme court of Tennessee, holden at Knoxville, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a suit lately pending in said court, wherein the East Tennesee, Virginia and Georgia Railroad Co. was plaintiff, and Hamblen County was defendant, adjudging the plaintiff to pay $580 and all the costs of the cause, it being the highest court of law or equity in said State in which a decree in said cause could be rendered and had of said suit, wherein was drawn in question the validity of certain statutes of Tennessee, on the ground of their being repugnant to the Constitution of the United States, and a decission was had in favor of their validity; and that said suit also drew in question that clause of the Constitution of the United States which forbids the States from passing any law impairing the obligation of contracts, and the decission of said court was in violation of said clause of said Constitution and against the rights claimed by the plaintiff in said suit, by reason whereof a manifest
43 error hath happened, to the great damage of the E. Ten., Va. & Geo. Railroad Company, as by its complaint appears; and we

being willing that the error, if any hath been committed, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, on the 3d Monday in October next, in said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be further done therein to correct all errors what of right and according to the laws and custom of the United States should be done.

Witness honorable Morrison R. Wait', Chief Justice of said Supreme Court, this the 3d day of October, 1877.

[SEAL.] H. M. AIKEN,
Clerk U. S. Circuit Court for Eastern District of Tennessee.

44 Know all men by these presents, that we, the E. Ten., Va. and Geo. Railroad Company, and Robert M. Barton, as security, are held and firmly bound unto Hamblen County in the full and just sum of five hundred dollars, to be paid to the said Hamblen County or their certain attorney, to which payment well and truly to be made the obligors herein bind themselves, their *heir*, heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents, sealed with our seals and dated this 3d day of October, 1877.

Whereas, lately, at a term of the supreme court of Tennessee, holden at Knoxville, in a suit pending in said court between the E. Ten., Va. & Geo. Railroad Company, plaintiff, and Hamblen County, defendant, a judgment was rendered by said court against the said E. T., Va. & Geo. Railroad Company, and the E. Ten., Va. & Geo. Railroad Company having obtained a writ of error and filed a coppy thereof in the clerk's office of said court to reverse said judgment in said suit; and a citation directed to the said Hamblen County, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, District of Columbia, the 2d Monday of October, 1877:

44½ Now, the condition of the above obligation is such, that if the said East Tennessee, Virginia & Geo. Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE EAST TENNESSEE, VIRGINIA & GEORGIA R. R. Co.,
By ROBT. M. BARTON, SEN. *Atto.*
ROBERT M. BARTON, SEN. [SEAL.]

Sealed and delivered in presence and allowed by—
JAS. W. DEADERICK,
Chief Justice, &c.

Bond filed October 3d, 1877.
Test:
J. F. DEADERICK, *Clk.*

45 United States of America to Wm. A. Howell, chairman of the county court of Hamblen County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 3d Mon-

day in October, 1877, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Tennessee, wherein the East Tennessee, Virginia and Georgia Railroad Company is plaintiff, and your County of Hamblen *are* defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Jas. W. Deadrick, chief justice of the said supreme court of Tennessee, this 3d day of October, 1877.

JAS. W. DEADERICK,
Ch. Justice of Supreme Court of Tennessee.

I acknowledge service of the within writ Octo. 11, 1877.

W. A. HOWELL,
Chairman, &c.,
By J. C. HODGES,
Counsel & Solicitor.

46 *Bill of costs retaxed in sup. c't.*

THE EAST TENNESSEE, VA. & GA. R. R. CO.
vs.
THE COUNTY OF HAMBLEN.

State tax	5 00
County "	5 00
Clerk T. C. Cain for entering & no. cause, 25; 4 dockets, 40; taking 2 pro's bond, 50; entering security to same of record, 50; taking affidavit, 05; 1 continuance, 25; copying opinion in record-book, 1,000 words, 1.00; judgment, 75; judgment for costs, 25; taxing bill of costs, 50	4 55
	$14 55

Judgment, Oct. 3, 1877, vs. pl'ff in error.

Costs of supreme court.

State tax	5 00
Cl'k Deaderick filing record, 75; entering security of record, 25; 7 docketings, 70; 3 rules on docket, 30; final decree, 75; entering same, 250 words, 25; judg't ag'st sec'ty, 25; taxing 2 bills costs 1.00	4 25
Clerk T. C. Cain, transcript of record, 7,000 words, 7.00; appeal bond, 75; seal, 50; postage, 15	8 40
	$17 65

Recovering, $281.86.
Judgment, Oct. 3, 1877, vs. pl'ff in error.

47 STATE OF TENNESSEE,
Supreme Court, at Knoxville:

I, J. F. Deaderick, clerk of said court, do hereby certify that the foregoing is a true, perfect and complete copy of the transcript of the record of the court below, as duly certified to and used in this court in the case of the E. Tenn. Va. & Ga. R. R. Company vs. Hamblen County, as well

as the written opinion delivered, and the orders, judgments, and all proceedings had by said supreme court of Tennessee, at its September term, 1877, in said cause, as the same appears of record in my office.

Given under my hand & the seal of said court, at office, in Knoxville, this 9th day of October, 1877.

[SEAL.] J. F. DEADERICK, *Clerk.*

STATE OF TENNESSEE:

I, J. W. Deaderick, chief justice of the supreme court of said
48 State, at Knoxville, do certify that J. F. Deaderick, whose name appears to the foregoing certificate, is, and was at the date thereof, clerk of said supreme court, duly appointed & sworn; that full faith & credit are due to his official acts as such clerk, & that his said attestation is in due form of law.

Given under my hand, at Knoxville, this the 9th day of October, 1877.

JAS. W. DEADERICK,
Ch. Justice of Supreme Court of Tennessee.

(Indorsement on cover:) No. 330. The East Tennessee, Virginia and Georgia Railroad Company, plaintiff in error, vs. Hamblen County. Tennessee Sup. Ct. Filed 24th October, 1877.

SUPREME COURT U.S.
FILED
NOV 16 1880
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1880—No. 330.

IN ERROR FROM THE SUPREME COURT OF TENNESSEE.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY,
IN ERROR,

vs.

HAMBLEN COUNTY.

BRIEF AND ARGUMENT OF

GEORGE BROWN,

For Plaintiff in Error.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY,

IN ERROR,

vs

HAMBLEN COUNTY.

This cause originated in the circuit court of Hamblen county, Tennessee, upon an agreed state of facts, as appears from the printed record, pp. 2, 3, 4, 5, 6, 6, 8 and 9.

The defendant in error claims that the plaintiff's railroad, known as the Cincinnati, Cumberland Gap and Charleston railroad company, is subject to be taxed by the said county of Hamblen for the year 1875. The agreed facts show that the said Cincinnati, Cumberland Gap and Charleston Railroad company was chartered by the legislature of the state of Tennessee, in 1853-4, pages 645 to 648, inclusive, of the pamphlet acts of said years, with succession for ninety-nine years. By the provision of the sixth section of said charter, it is provided "that whenever said company shall have completed that part of said road from Cumberland Gap to the East Tennessee and Virginia railroad or to the southern boundary line of the state of Tennessee, they shall have all the rights and privileges conferred by this charter for the period of ninety-nine years."

By the eighth section of said charter it is provided, *that said company shall be and they are hereby vested with all the rights, powers and privileges* and subject to all the restrictions and liabilities of the Nashville and Louisville railroad company, except otherwise provided for in the charter."

The charter to which reference is here made as a part of the charter of the Cincinnati, Cumberland Gap and Charleston railroad company, was granted by the legislature of the State of Tennessee, on the 9th day of Feb., 1850, and published in the pamphlet acts of 1849–50, 239 to.....inclusive.

By the fortieth section of said act, chartering the Nashville and Louisville railroad company, it is enacted "that the capital stock of said company, " the dividends thereon, and the roads and fixtures, " depots, workshops, warehouses and vehicles of " transportation belonging to the company shall " be forever exempt from taxation in each and " every one of said States of Tennessee and Ken- " tucky, and it shall not be lawful for either of said " states, or any corporation or municipal police or " other authoritiy thereof, or any town, city or " county or district thereof, to impose any tax on " said stock or dividends, property or estate; pro- " vided, the stock or dividends, when said divi- " dends shall exceed the legal interest of the State " may be subject to taxation by the State, in com- " mon with, and at the same rate as money at in- " terest or interest thereon, and when the State " shall impose a tax on the dividends declared in " favor of the stockholders of the company, the " tax shall extend only to such proportion of said

" dividends and capital stock as the part of the " road in that state shall bear to the whole road."

The state of Tennessee held a statutory mortgage on the Cincinnati, Cumberland Gap and Charleston railroad, and on the 20th of July, 1871, filed a bill under the provisions of an act of the legislature, passed Dec 22d, 1870, and an act amendatory thereof, passed Dec. 21st, 1870, in the chancery court at Nashville, against said Cincinnati, Cumberland Gap and Charleston railroad company, and the stockholders of said company, and sold said road with all its property, *rights, powers, privileges and immunities* to C. M. McGhee and R. T. Wilson, page 4 of the record. The sale was made and confirmed on the 10th day of Dec., 1871.

By the provisions of the tenth section of an act, entitled, "an act to amend the act of 1870, chapter " 79, for the sale of the interest of the state in de- " linquent railroad companies, passed July 1st, " 1870," which tenth section is in the words following to-wit: "*Be it further enacted*, That upon the " sale of any of the franchises of either of the " railroad companies by the commissioners under " the provisions of this act, *all the rights, privileges* " *and immunities appertaining to the franchise* so sold " under its acts of incorporation and the amend- " ments thereto and the general law of the state " and acts amendatory thereof, *shall be transferred* " *to and rest in such purchaser* and *the purchaser* " *shall hold the franchise* subject to the lien of the " state."

The legislature of the state of Tennessee, on the 24th day of March, 1875, passed an act entitled an act declaring the mode and manner of valuing the

property of a railroad company. See pamphlet, act 1875, page 100. "The first section enacts that " each railroad company owning and operating a " railroad in the state shall on or before the first " day of May of each year make out and file with " the comptroller of the state treasury a complete " schedule of all its property, real and personal " and mixed, &c." The second section of said act provides for the manner of valuing the property.

The eleventh section enacts "that each and every " railroad company which will accept as a special " amendment to its charter for the period of ten " years from the 1st day of January, 1875, and that " will pay annually to the treasurer of the state, " one and one-half per cent on the gross receipts, " from all sources, of such company, shall be ex- " empt from the provisions of the foregoing sec- " tions of this act, and the paying of one and one- " half per cent. upon all gross earnings of said " road shall be in full of all taxation," &c.

This section of said act of 1875, has been declared unconstitutional by the supreme court of Tennessee, in the case of the Railroad Companies in error vs. Gaines, and by this court in the same case, 7 Otto 697 to 712.

Under the provisions of the said act of 1875, the said Cincinnati, Cumberland Gap and Charleston railroad was assessed for taxation for the year 1875, as appears from the said agreed facts, pages 7 and 8 of the record.

The question is as to the right Hamblen County has under the provisions of the said act of 1875, of the legislature of the State of Tennessee, to tax said Cincinnati. Cumberland Gap and Charleston railroad company.

It is insisted for the plaintiff in error, that the said county of Hamblen has no such right.

The doctrine that the legislature of a state unrestricted by constitutional prohibition, has the right or power to contract in a charter authorizing the formation of a corporation, for an exemption of its property from taxation has never been denied in Tennesee. Knoxville and Ohio R. R. Co., vs. Hicks, 1 Legal Reps., 343.

The same doctrine has been repeatedly held by this court. Tomlinson vs. Branch, 15 Wall., 460. No such prohibition is contained in the constitution of the state of Tennessee of 1834, which was in force at the time the said charter of the Nashville and Louisville railroad company and the Cincinnati, Cumberland Gap and Charleston railroad company, were granted.

It has never been controverted but always admitted, that the twenty ninth section of the act incorporating the Nashville and Chattanooga railroad company is a good and valid exemption to that company for the period therein specified.

It is insisted for the plaintiff in error, however, that by the eighth section of the said act of the legislature of the State of Tennessee, chartering the said Cincinnati, Cumberland Gap and Charleston Railroad company by the words: "That said company shall be and they are hereby vested *with all the rights, powers* and *privileges*, and subject to all the restrictions and liabilities of the Nashville and Louisville railroad company, except as otherwise provided for in this charter," conferred on it all the rights, powers, privileges, franchises and exemption that were conferred on the said Nashville and

Louisville railroad company by the provisions of its charter, and that all of said rights, powers, privileges franchises and exemptions were sold by the chancery court under its decree in the case of the state of Tennessee vs. said Cincinnati, Cumberland Gap and Charleston railroad company and conferred on the purchaser, McGhee and Wilson, who transferred whatever they acquired by said purchase, to the plaintiff in error, the East Tennessee, Virginia and Georgia railroad company.

This is the question in the case: What did the legislature intend when it enacted "that said company shall be and *they are hereby vested with all the rights, powers and privileges* and *subject* to all the restrictions and liabilities of the Nashville and Louisville railroad company"? Did it intend to include exemption from taxation? In this case it is true the supreme court of Tennessee held that it did not, but the learned judge delivering the opinion of the court admitted that exemption from taxation may be included in the terms "rights or privileges," as defined by lexicographers and understood by jurists of other states, were comprehensive enough to carry the exemption, but says the court, "it is a settled and uniform rule of construction, according to all the authorities, that no exemption from taxation can be allowed unless it be granted in plain and unambiguous terms; every presumption and intendment is against it and every doubt in the language used is to be resolved against the exemption: bearing this in mind it results that the grant of the "rights, powers and privileges" of the Nashville and Louisville railroad company, did not carry with it immunity or exemption from taxation granted to

that company. All meaning that may be given to the words 'rights, powers und privileges," without including the exemption.

Section eleven of the constitution, by which the legislature is forbidden to pass any law granting to any individual rights, privileges and immunities or exemptions other than such as may be by the same law extended to other members of the community who may be able to bring himself within the provisions of such law." Record, pages 13 and 15.

The court seems to have regarded itself as precluded from giving the usual and ordinary meaning and effect of these terms, upon the assumption that the meaning of the word "privilege" had been restricted by the provision contained in the constitution of 1834. The article of the constitution from which the above quotation was made has the following proviso, to-wit: "Provided always, the legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good."

This decision it is admitted, is direct and emphatic against the exemption contended for, and it is insisted by the defendent in error is inconclusive on this court. But is this court concluded by this construction of the state court? As a general rule the Federal Courts adopt and follow the ruling of the state courts in their construction of the constitution and statutes of their respective states. But to this rule there are exceptious as well established perhaps as the rule itself. The Federal court "will follow as of obligation, the decisions of the state courts on local questions peculiar to themselves or on questions respecting the construction of their

own constitution and laws." But if a contract when made, was valid under the constitution and laws of the State as they were previously expounded by its judicial tribunals or as they were understood at the time by the parties, no subsequent legislation or judicial construction will be regarded by the Federal courts as establishing its invalidity.

Olcott vs. Supervisors, 16 Wall, 678. Township of Pine Grove vs. Talcott, 19 Wall. 666.

The constitution and the acts of the legislature after its adoption by the people are referred to for the purpose of showing that the state was doing every thing in its power to encourage the building of railroads, and in granting charters very great inducements were held out for the purpose of inducing capitalists to take stock in the railroad companies.

Moreover, it is believed that there was not a single straight charter granted by any legislature prior to the year 1870, or 1875, but expressly exempted all the property of the railroad company, including the stock, for a period of at least twenty years after the road was completed, and many of the charters contained exemptions forever. A number of charters for the principal railroads in the state, such as the Nashville and Chattanooga railroad company, Nashville and Louisville railroad company and Louisville and Nashville railroad company were first granted and were very long, and all contain express exemptions from taxation for long periods, and for convenience it became the almost universal custom to adopt one of the old charters, after first incorporating the new company, by the language "that it *shall have all the*

rights, powers and privileges, conferred on the Nashville and Louisville railroad company by its charter," and in no charter adopting the charter of another company that contains an express exemption from taxation, is it declared that the new company shall not be entitled to exemption from taxation. It was universally understood in Tennessee by all the departments that all the railroads in the state were exempt from taxation for at least twenty years after their completion although, nine-tenths of them were chartered by adopting the charter of some other railroad company that was exempt from taxation for the same period by the use of the term "shall have all the *rights, powers and privileges of said company.*"

This is already shown by the fact that no law was ever passed by the legislature of the state of Tennessee to tax or collect taxes off of any railroad in the state prior to the year 1875, and no tax was ever attempted to be collected before that time, although a number of the railroads had been completed for twenty or twenty-five years. The Cincinnati, Cumberland Gap and Charleston railroad had been built for ten years before that date, and was sold by the state of Tennessee in 1871, yet; no tax was ever assessed against it until the year 1875.

These facts show conclusively what the parties understood when the legislature conferred on the said Cincinnati, Cumberland Gap and Charleston railroad company "all the rights, powers and privileges conferred on the Nashville and Louisville railroad company." *What effect will be given by the courts to this practical construction?*

By article 11, section 9 of the constitution of

1834, it was declared that "a well regulated system of internal improvements is calculated to develop the resources of the state and promote the happiness and prosperity of her citizens; therefore it ought to be encouraged by the General Assembly."

From that time forward, at nearly every session of the legislature laws were passed to encourage and aid internal improvements. In 1837–38, the state of Tennessee adopted what was known as the "INTERNAL IMPROVEMENT SYSTEM." By the provisions of this statute the state was to become joint owner with individual stockholders of all incorporated railroads and macadamised turnpikes in the state, by taking one–half of the capital stock, and paying the same by issuing its bonds, payable in thirty years." All the charters granted for a number of years contained express exemptions from taxation.

These charters were very long (as will be seen by inspecting them) and it became the almost universal custom when granting a charter to simply confer on the corporators all the rights, powers and privileges conferred on another company, mentioning it by name. This made the act of incorporation very short.

It is believed that not a single charter for a railroad company has ever been granted in Tennessee, that does not by its provisions adopt the charter of some other railroad company, but what expressly exempts its property from taxation for some long period and some of them forever.

It was understood by the legislature and executive departments of the government in Tennessee for more than twenty-five years after the comple-

tion of the railroads containing the precise exemptions contained in the charter of the Cincinnati, Cumberland Gap and Charleston railroad company, that they were exempt from taxation, is shown by the fact, that the legislature never passed any law by which any railroad could be taxed until the year 1875, and there never was any assessment made in Tennessee against any railroad company before that year. The road in controversy in this case had been built ten years before that time, and was sold by the state in 1871, yet no tax had ever been assessed against it

The legislature had given a practical construction to this charter and all others containing the same language, so, also had the officers of the state, for more than twenty-five years. These facts are material and must be considered in our efforts to arrive at the true meaning of the charter now in question, as understood by the parties.

The principles were aptly illustrated in the following cases: Mr. Webster, in the case of the Providence railroad company vs the city of Boston, in referring to the habit of courts in looking to contemporaneous usuage and subsequent acts of parties in the construction of statutes and contracts, said: "All law writers recognize common sense recognize this principle of interpellation. The doctrine is expressed so accurately, tersely and completely, by Sir Edward Sugdon, that I will quote his own words: "One of the settled rules of law for the construction of ambiguities in ancient instruments is, that you may resort to contemporaneous usuage to ascertain the meaning of the deed: tell me what you done under a deed and I will tell you what the

deed means." Webster's Works, Vol. 5, p. 191.

Judge Cooley in his book on Constitutional Limitations, p. 78, makes the distinction between contemporaneous construction, subsequent construction and practical construction.

Contemporaneous construction may consist simply in the understanding with which people receive it at the time, or in acts done in putting it into operation and which necessarily assume that it is to be construed in u particular way. He says but little force is to be attached to publi: understanding.

But where there has been a practical construction which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the courts with plausibility and force, which it is not easy to resist.

In United States vs Lytle, 5 McLean 9, the opinion of the court is: "But the executive hand of the government is bound to give effect to the laws which regulate its duties, and this necessarily requires a construction of those laws, and where such construction has been acted on for a great number of years under the sanction of the law-making power, it becomes a serious question how far the judiciary can or should interfere."

In United States vs Gilmore, 7 Wall., 330, construction of statutes * * * made by accounting officer of the treasury, especially, when so long continued as to become a rule of departmental practice, are entitled to great consideration, and will in general be adopted by the court.

In Scanlon vs. Childs, 33 Wis., 666.

The general understanding of a law and constant

practice under it, unquestioned by any suit, or public or private action to test or settle the construction of it by courts, ought to be very strong if not conclusive.

1 Wheaton's R., 486, A. D., 1816. Opinion of Mr. Justice Todd.

Procter vs. Browder.

In the construction of statutory or local laws of a state, it is frequently necessary to recur to the history of the country in order "to ascertain the " reason *as well as the meaning as well as many of* " *the provisions in them to enable the court to apply* " *the different rules for construion to the statutes.*"

3 Howard, U. S. 1 R., 24, Aldridge vs. Williams, A. D., 1845. "We must gather the meaning of the " legislature when any ambiguity exists by *comparison of laws on the same subject and looking, if necesrary, to the public history of the time in which it was passed.*"

5 Wall. R., 50, A. D., 1869.

Opinion by Judge Nelson, Chicago vs. Sheldon.

In Feb., 1859, by charter, the Chicago city railroad company was granted the franchise of constructing and operating a city railway through certain streets in Chicago on the terms to be agreed on with the city By the contract the company agreed "to keep eight feet in width along the line of its track on all the streets where it had one track and sixteen feet where there were two tracks in good repair." The company kept the streets in repair up to 1866 without any effort of the city to lay any other burden on it, yet in 1866, when laying on assessments on property owners on certain streets to improve it, the city assessed one-eighth in

money on the company, Sheldon a non-resident stockholder filed his bill in the United States Circuit Court to restrain the city from collecting this assessment, on the grounds that it violated the contract.

The relief was granted in the Circuit Court and the decree affirmed in this court. On page 54, paragraph 2, the court held "*What adds great weight to this view is it accords with the practical construction given to contract by both parties.* It was entered into May 23, 1857, seven years before the assessment was made. This court says, in delivering the opinion of the court :

"In cases *where the language used by the parties is indefinite or ambiguous and hence of doubtful construction, the practical interpretation by the parties themselves is entitled to great, if not controlling influence.*

The interest of each leads to consider most favorably to himself, and when the difference becomes serious and beyond amicable adjustment it can be settled only by the arbitrament of the law."

"But in executory contracts its execution necessarily involves a practical construction, if the minds of both parties concur there can be no great danger in the adoption of it by the court."

"Another consideration in the case is entitled to weight on the interpretation of this contract, made between the city and the company in 1864. This ordinance is in ~~PARI MATERNA~~ *para materia* with the one of 1859 and helps to explain the ambiguity of it."

The supreme court of Massachusetts in a well considered case held that the contemporaneous is generally the best construction of the statute. It gives the sense of the community of the terms

made use of by the legislature. If there is ambiguity in the language, the understanding and application of it, when the statutes first came into operation. And sanctioned by long acquiesence on the part of the legislature and judicial tribunals it is the strongest evidence that it has been rightly explained in the practice.

A construction under such circumstances becomes established law

Packard vs. Richmond,17 Mass. R., 114. Rogers vs. Goodwin, 2 Mass. R., 477.

The exemptions from taxation, as we have seen, of all the railroads for some period of time was the well settled policy of the state.

Are the terms used "rights, powers and privileges" broad and comprehensive enough to include exemptions? It is admitted that they are, if they are to have the usual force and effect accorded to them by lexicographers and jurists of other states, but as before stated it is assumed that the meaning of the term "privilege" has been restricted by the state constitution and that when employed in a statute the court must presume that the legislature intended to restrict its meaning to the meaning given to it in the constitution.

It is insisted that this assumption is erroneous for several reasons.

It will not be presumed that the convention that framed the constitution intended to qualify or to restrict the force and meaning of a plain English word.

It is true the constitution forbids the passage of laws granting rights, powers, privileges, immunities or exemptions to an individual or individuals other

than such as may be by the same law extended to every member of the community who can bring himself within its provisions.

I may admit for the sake of argument, that the use of these terms in the connection in which they are used in the case quoted, indicate a different meaning was attached to each. Yet, it does not follow that the framers of the constitution intended to give a constitutional meaning to these words, and thus by constitutional provision make it the duties of the court in all cases in which they find either of them employed in a statute to construe it as meaning the same as it does in this clause in the constitution.

If it occurred no where else in the constitution the inference drawn from it must be a very violent one. Words generally have different shades of meaning. In one connection they may mean one thing and in another and different connection a very different thing. We find the same word often used in the same statute with distinct and different meanings. An illustration of this may be found in the constitution itself in the use of this very word "privilege." It is found elsewhere than in the eleventh article. It frequently occurs in this same constitution, and is so used as to give it all the shades of meaning which it has according to lexicographers. Now if the framers of the constitution have employed it with one meaning, in one place and with another and different meaning in other places, what become of the hypothesis that the meaning has been constitutionally defined by the eleventh article. We must then be at liberty to

interpret the terms "rights" and "privileges" as defined by judicial and lexical authorities.

Mr. Justice Washington says, that exemption from taxation is embraced by the general definition of "privileges." Webster defines it to mean a right or immunity not enjoyed by others—an exemption from an evil or burden; that under the Roman law it denoted some peculiar benefit, some right or advantage not enjoyed by others, &c.

Crabbe says, it signifies a law made in favor of an individual. It consists in some positive advantage, exemption or immunity. In its more extended sense, it comprehends every prerogative; exemption and immunity. Abbott defines it to be a right or immunity by way of exemption from general law. Bovier defines it as a private law in derogation of common right. Pascal says it is a special right belonging to an individual or class, properly an exemption from some duty—an immunity from some general burden or obligation. State vs. Betts, 4 Zabriskie, 555–6. The court says: "The term privilege includes in its ordinary definition an exemption from burdens as others are subject to, as the privilege of being exempt from arrest or taxtion."

A number of other authorities could be added if deemed necessary. From those cited it clearly appears that a privilege is an EXEMPTION and an EXEMPTION is a PRIVILEGE. Was it the intention of the legislature by the use of the language found in these several charters, that it should be construed in accordance with these standard authorities?

In the case of Humphrey vs. Pegues, 16 Wall., 244, this court held that the legislature granting to

one railroad company "all the RIGHTS, POWERS and PRIVILEGES conferred upon another railroad company that was exempt from taxation by its charter, exempted the second road from taxation also."

It has been insisted that this case has been overruled or materially modified by the case of Morgan vs. Lousiana, 93 U. S., 217–223, but I do not concur with this view. The question involved in the two cases was very different. There is no conflict between them. In the first it is held that a grant to one railroad company of all the "rights, powers and privileges" of another carried to the former an exemption from taxation enjoyed by the latter. While in the second case the property claimed to be exempted was personal property, that had belonged to the railroad company, but had been sold under executory process by the marshal and was then in the hands of the purchasers at the marshal's sale. Mr. Justice Field says in his opinion, "The greater part of the property, outside of the capital stock, was subject to constant waste and destruction, and according to the ordinary course of business would be disposed of by the company as new works were required, and it can hardly be supposed that the oxemption should follow the fixtures and vehicles of the company after they had passed out of its control so that wherever found the power of taxation could not touch them," etc.

In the present case we are not left to infer what the legislature of the State of Tennessee intended should follow the property when sold, but we have an express declaration by the 10th section of said act passed on the 21st of December, 1870, entitled "an act to amend the act of 1870, chapter 79, for

the sale of the interest of the state in delinquent railroad companies, passed July 1, 1870," under the provisions of which the Cincinnati, Cumberland Gap and Charleston Railroad Company was sold. The tenth section is in the following words, to-wit: "Sec. 10.—Be it further enacted that upon the sale of any of the franchises of either railroad companies by the commissioners under the provisions of this act, all the rights, priviliges and immunities appertaining to the franchise as sold, under its act of incorporation and the amendments thereto and the general improvement law of the state and acts amendatory, shall be transferred to and vest in such purchaser, and the purchaser shall hold such franchise subject to all liens and liabilities in favor of the state as now provided by law against railroad companies."

The facts agreed on show that the franchise and privileges of the said Cincinnati, Cumberland Gap and Charleston Railroad Company were sold. See pages 4 and 5 of the transcript, and the decree pages 5 and 6, and the tenth section of the above recited statute declares "that upon the sale of any of the franchises of either railroad company under the provisions of this act, all the rights, privileges and immunities appertaining to the franchises so sold under its act of incorporation and the amendments thereto, and the general law of the state and the acts amendatory thereof, shall be transferred to and vested in such purchasers," etc.

It is insisted that this section contains a legislative admission or construction of the meaning of the terms, "privilege" and "franchise," as used in

in said charter and that "immunity" is conferred or granted by the use of these terms.

The State of Tennessee never conceived the idea of taxing railroads that were exempt from taxation until the year 1875, when the legislature determined to repudiate the honest debt of the state and to make the railroads pay their debts twice and to bear all other burdens that could be put upon them. The said act of 1875, requires all the roads in the state to be assessed for taxation although many of the charters contained express exemptions for periods long after that time.

GEORGE BROWN,
Counsel for Plaintiff in Error.

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THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY,

Plaintiff in Error,

VERSUS

HAMBLEN COUNTY.

Brief for Defendant.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY,

Plaintiff in Error,

VERSUS

HAMBLEN COUNTY.

Brief for Defendant.

This cause stands upon an agreed state of facts, and was properly presented and tried upon the record as made up in the Circuit Court of Hamblen county—the statute law of Tennessee providing for the presentation and trial of a cause after this manner.

The cause was submitted to the Judge of the Circuit Court, without the intervention of a jury according to the provisions of the Tennessee statute.

The Judge of the Circuit Court found for defendant in error upon one ground, and the Supreme Court of Tennessee upon quite a different ground.

(See record, side page 31 and side pages 35 to 38.)

It is now respectfully insisted that both grounds are correct, and both holdings correct. The attention of this Honorable Court is respectfully invited to the statements of law and of legal history in Tennessee, contained in the opinion of His Honor Judge Rose, and upon those statements it is now here insisted that the Act of Assembly of February 9, 1850, never became, or could become a part of the contract (charter) between the State of Tennessee and the Cincinnati, Cumberland Gap and Charleston Railroad

Company. For, while the Act of November 18, 1853, had the effect of a contract between the State and the Cincinnati, Cumberland Gap and Charleston Railroad company, it was nevertheless BY ITS TERMS A PUBLIC STATUTE.

The effort of the plaintiff in error is, to intepolate into that statute, as an important part of it, that which is in fact not written in IT or in any other STATUTE of the State—the Act of February 9, 1850, never having become a law in Tennessee.

If this view is correct, then there can be no pretense that the charter of the Cincinnati, Cumberland Gap and Charleston Railroad company contains any "exemption from taxation."

But admitting that the language used in the act of incorporation, passed November 18, 1853, is effective to confer upon the company incorporated the "RIGHTS, POWERS AND PRIVILEGES" which were intended to be conferred upon the Nashville and Louisville Railroad Company by the Act of February 9, 1850, still it is very earnestly insisted that the holding of the Supreme Court of Tennessee is right and for the reasons stated in their opinion. See the opinion in the record at side, pages 35–8.

The claim of the plaintiff in error is "EXCEPTION" from taxation by reason of the fact that the act of February 9, 1850, EXEMPTED the property, etc., of the Nashville and Louisville Railroad Company from taxation. This, because the Act of 1853, confers upon the company which it incorporates, "RIGHTS, POWERS, PRIVILEGES"

The Supreme Court of Tennessee passed upon these words as used in this Act, and construed the statute as written, and said in effect, that the words "rights, powers, privileges," do not in the aggregate, nor does any one of them, singly, mean EXEMPTION, or exemption from taxation.

That court said, that in Tennessee law, these words have different meanings. That they are used in the organic law of the State with different meanings.

It is submitted that this is correct PER SE; and that, therefore, it was not the intention of the Legislature when it passed the Act of incorporation of 1853 to "exempt the property of the company from taxation. That it did not use language effective for that purpose.

But: The act of November 18, 1853, while it was a charter of incorporation, was at the same time, and is, a public law of the State of Tennessee.

As such it is the peculiar province of the Supreme Court of Tennessee to construe it and expound its meaning.

This Honorable Court has fixed a rule which is well settled, for the guidance of State courts in construing such statutes. It has said, in the case of Bailey vs Magwire, (22 Wal. 229:)

"There must be something said (in the charter) "which is broad enough to show clearly that the le- "gislature intended to relieve the corporation from a "part of the burdens borne by other real and per- "sonal property." * * * "It is manifest that "legislation which it is claimed relieves any species "of property from its due proportion of the general "burdens of Government, should be so clear that "there can be neither reasonable doubt nor contro- "versy about its terms." * * * "If * * "on any fair construction of the legislation, there is a reasonable doubt whether the contract is made "out, this doubt must be solved in favor of the State.

"In other words the language used must be of "such character as, fairly interpreted, leaves no room "for controversy."

The Supreme Court of Tennessee have construed the statute in question, in direct view of this well settled rule, and in the case at bar.

As to such constructions of State laws, and the action of this Honorable Court in reference to them, the rule has been so often stated by this Honorable Court that the principle has become elementary.

The rule is well stated in Walker vs. State Harbor Commissioners (17 Wal., 650,) by Field, J., in this language :

"The construction of a State statute by the high-
"est court of a State becomes as much a part of the
"statute as if engrafted into it."

See also Shelby vs. Gray (11 Wheaton, 367); Christy vs. Pridgeon (4 Wallace, 196); McClung v. Silliman (3 Pet., 270); Greene vs. Neil's Lessee (6 Pet., 291); Ross vs. Duvall (13 Pet. 45); Massengill vs. Downs (1 How. 767); Nesmith vs. Sheldon (1 How., 812); Van Rensellaer vs. Kearney (11 How., 297); Webster vs. Cooper (14 How., 504); Leffingwell vs Warren (2 Black 603); South Ottowa vs Perkins (4 Otto, 260).

Besides all this it distinctly appears in the record at side page 4, that a condition upon which the rights and privileges of the charter were conferred was the completion of the road from Cumberland Gap to the East Tennessee and Virginia Railroad, or to the southern boundary line of the State of Tennessee. (The word "to" before the words Cumberland Gap in the record is a misprint.)

It distinctly appears also that the road has never been built from Cumberland Gap to any point. See record side pages 5 and 6.

It follows that the Act incorporating the Cincinnati, Cumberland Gap and Charleston Railroad Company, contains no clause exempting the property of the company from taxation, and that there is no error in the judgment of the Supreme Court of Tennessee in this cause.

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